IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2566 OF 2007

Jaywant Harishchandra Pimple & Ors..... ....Petitioners.
V/s
Prabhakar Harishchandra Patil & Ors..... ....Respondents.

Mr.R.D.Suryawanshi, Adv. for the petitioners.

Mr.Nitin V. Gangal, Adv. For respondents.

CORAM: A.P.DESHPANDE, J.
19/7/07

PC:

The present respondent No.1 is the original plaintiff who instituted a suit against his father Harishchandra since deceased and others. The present petitioner Nos.1, 2 and 3 are brothers and sister of the plaintiff so also respondent Nos. 2 and 3 are respectively brother and sister of the plaintiff. The plaintiff in the suit claimed partition and separate possession of his share in the properties. The plaintiff claimed that all the suit properties are joint family properties and hence the plaintiff has share in all the properties. The father of the plaintiff by name Harishchandra claimed that baring Survey Nos.77 and 78 all other properties mentioned in Schedules A, B and C to the plaint are his self acquired properties and hence the plaintiff can only claim the share in Survey Nos.77 and 78 and not in any other property. The trial Court accepting the case of plaintiff decreed the suit as prayed for and granted share to the plaintiff in all the properties mentioned in the plaint. During the pendency of the suit father Harishchandra expired in the year 1993. He had executed will and bequeathed his share in the properties in favour of widow and other defendants. During the pendency of the suit widow of Harishchandra also expired in the year 1999. The

defendants being aggrieved by the judgment and decree passed by the trial Court preferred regular civil appeal which is pending on the file of 3rd Ad-hoc Additional District Judged, Palghar. In the appeal the present petitioners (defendant Nos.3, 4 & 6) filed an application at Ex.18 under Order 41 Rule 27 read with section 151 of the Code of Civil Procedure for bringing on record the will executed by father Harishchandra so also the will executed by mother. Under the will purported to have been executed by mother the property has been bequeathed in favour of the petitioners. A further prayer was also made to allow the appellants before the First Appellate Court to lead additional evidence in the appeal so as to substantiate and prove the will purported to have been executed by father Harishchandra and his widow who expired during the pendency of the suit. The First Appellate Court has rejected the application and aggrieved thereby the present writ petition has been filed by petitioners who are original defendants.

2. The parties to this petition in aforesaid facts have agreed that the share of father and mother i.e. Harishchandra and his widow in relation to which a will has been executed by both the deceased can be set apart and ought not be adjudicated upon in the pending civil appeal before the District Court as the subject of the original suit was partition and separate possession of the joint family properties. The suit does not at all deal with the execution of will by father and mother and the legality and validity thereof. The consent terms tendered record that First Appellate Court should proceed to decide the appeal without pronouncing anything on execution of will and the legality and validity thereof. Parties have further agreed that whosoever desires to take proceedings in relation to the will executed by father and mother would be free to do so in appropriate separate proceedings before the appropriate Forum. Both the learned counsel appearing for respective parties make statement that the respondent No.3-Deepa who is one of the sisters of the petitioners

and respondents has not contested the suit nor is contesting the regular first appeal pending on the file of district Court. In these facts and circumstances learned counsel for the petitioner seeks permission to delete the respondent No.3. Permission to delete respondent No.3 is granted. With the said agreement in view the parties have placed on record the consent terms duly signed by parties and their respective advocates. Parties are present in the Court and they admit the consent terms to be true and correct. A joint request is made for disposal of writ petition in consent terms. Hence writ petition is disposed of in consent terms. Consent terms are taken on record and marked `X' for identification.

19.7.07